

Senate Bill No. 1349

CHAPTER 291

An act to add Sections 2080.2 and 2080.4 to, and to add and repeal Section 2080.3 of, the Fish and Game Code, relating to endangered species.

[Approved by Governor September 23, 2010. Filed with
Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1349, Cogdill. Endangered species: experimental populations: Chinook salmon.

The federal Endangered Species Act of 1973 (FESA) directs federal agencies, in consultation with the Secretary of the Interior or the Secretary of Commerce, as appropriate, to carry out conservation programs for endangered species listed under FESA. FESA generally prohibits activities affecting these threatened and endangered species unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. FESA provides for enhancement of survival permits to allow actions necessary for the establishment and maintenance of experimental populations designated pursuant to that act.

The California Endangered Species Act (CESA) prohibits the taking of an endangered or threatened species, except as specified. The Department of Fish and Game may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated. Existing law provides that if any person obtains from the Secretary of the Interior or the Secretary of Commerce an incidental take statement or incidental take permit pursuant to FESA that authorizes the taking of an endangered species or threatened species listed pursuant to FESA, and that is an endangered species, threatened species, or candidate species pursuant to CESA, no further authorization or approval is necessary under CESA for that person to take the endangered species, threatened species, or candidate species identified in, and in accordance with, the incidental take statement or incidental take permit, if that person notifies the Director of Fish and Game, as specified, and the director determines that the statement or permit is consistent with CESA.

This bill would provide that a person who obtains a federal enhancement of survival permit that authorizes the take of spring run Chinook salmon, in order to establish or maintain an experimental population in the San Joaquin River pursuant to FESA and the federal San Joaquin River Restoration Settlement Act, requires no further authorization or approval under CESA for that person to take that species as identified in, and in accordance with, the enhancement of survival permit, if specified requirements are met. These provisions would remain in effect only until

the effective date of an amendment to FESA that alters the requirements for issuing an enhancement of survival permit.

The bill would authorize the incidental take of spring run Chinook salmon in the San Joaquin River that are designated as an experimental population under FESA, without the need for further authorization or approval under CESA, if specified requirements are met.

The people of the State of California do enact as follows:

SECTION 1. Section 2080.2 is added to the Fish and Game Code, to read:

2080.2. The Legislature finds and declares the following:

(a) The historic settlement approved by Congress in the San Joaquin River Restoration Settlement Act (Part I of Subtitle A of Title X of Public Law 111-11) directs the federal government to reintroduce spring run Chinook salmon to the San Joaquin River. In approving the settlement and the new statutory provisions governing the reintroduction of California central valley spring run Chinook salmon, Congress found that the implementation of the settlement, to resolve 18 years of contentious litigation regarding restoration of the San Joaquin River and the reintroduction of the salmon, was a unique and unprecedented circumstance. The settlement also provides that nothing in the settlement diminishes the statutory or regulatory protections under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) nor does it establish a precedent with respect to any other application of the federal act.

(b) Central valley spring run Chinook salmon have been listed since 1999 as a threatened species under this chapter and were still listed as of January 1, 2011.

(c) Restoring spring run Chinook salmon to the San Joaquin River is intended to further the conservation and recovery of the species.

(d) Consistent with the unique and historic circumstances that led to the settlement, nothing in Section 2080.2, 2080.3, or 2080.4 is intended to create any precedent as to future application of this chapter, nor do Sections 2080.2, 2080.3, or 2080.4 otherwise modify other existing statutes or legal obligations.

SEC. 2. Section 2080.3 is added to the Fish and Game Code, to read:

2080.3. (a) Notwithstanding any other provision of this chapter, if any person obtains from the Secretary of Commerce an enhancement of survival permit pursuant to Section 1539(a)(1)(A) of Title 16 of the United States Code that authorizes the taking of spring run Chinook salmon (*Oncorhynchus tshawytscha*) in order to establish or maintain an experimental population in the San Joaquin River pursuant to subsection (j) of that section and the San Joaquin River Restoration Settlement Act (Part I of Subtitle A of Title X of Public Law 111-11), no further authorization or approval is necessary under this chapter for that person to take that species as identified in, and

in accordance with, the enhancement of survival permit, if all of the following requirements are met:

(1) That person shall notify the director in writing that the person has received an enhancement of survival permit and include in the notification a copy of the permit.

(2) Upon receipt of the notice specified in paragraph (1) of subdivision (c), the director shall immediately have the notice published in the General Public Interest section of the California Regulatory Notice Register.

(3) Within 30 days after the director has received the notice specified in paragraph (1), the director shall determine whether the enhancement of survival permit will further the conservation of the species. As used in this paragraph, “conservation” has the same meaning as defined in Section 2061.

(4) The director shall immediately have the determination pursuant to paragraph (3) published in the General Public Interest section of the California Regulatory Notice Register.

(b) The timing and extent of a take authorization under this section shall be limited to the terms in the federal enhancement of survival permit and shall expire upon the expiration of the federal permit.

(c) This section shall remain in effect only until the effective date of an amendment to Section 1539 of Title 16 of the United States Code that alters the requirements for issuing an enhancement of survival permit, as applicable, and as of that date is repealed, unless a later enacted statute, that is chaptered before the date this section is repealed, deletes or extends that date.

SEC. 3. Section 2080.4 is added to the Fish and Game Code, to read:

2080.4. (a) If a population of spring run Chinook salmon in the San Joaquin River is designated as an experimental population under subsection (j) of Section 1539 of Title 16 of the United States Code, no further authorization or approval is necessary under this chapter for any person to incidentally take members of that experimental population, if all of the following requirements are met:

(1) The Secretary of Commerce has published regulations in the Federal Register specifying management restrictions, protective measures, prohibitions, and exceptions to the prohibitions for the designated experimental population of spring run Chinook salmon in the San Joaquin River.

(2) The director has determined, in writing, that the management restrictions, protective measures, prohibitions and exceptions to prohibitions contained in the regulations specified in paragraph (1) meet the requirements in subdivision (b).

(3) The action or activity that results in incidental take of the designated experimental population is authorized by the regulations published in the Federal Register.

(b) The director shall issue the determination described in paragraph (2) of subdivision (a), if the director finds that the federal regulations described in paragraph (1) of subdivision (a) meet all of the following criteria:

(1) The federal regulations will further the conservation of the spring run Chinook salmon. As used in this paragraph, “conservation” has the same meaning as defined in Section 2061.

(2) The federal regulations contain all reasonably feasible measures to avoid and minimize the impacts of any taking allowed by the regulation.

(3) The federal regulations will not jeopardize the continued existence or recovery of spring run Chinook salmon, and will not jeopardize the restoration of spring run Chinook salmon in the San Joaquin River.

(c) If the director determines that the federal regulations described in paragraph (1) of subdivision (a) are not consistent with this chapter, or if the action or activity that results in incidental take is not authorized in those federal regulations, then the incidental take of members of the designated experimental population may only be authorized pursuant to this chapter.

(d) The director shall publish the determination, pursuant to paragraph (2) of subdivision (a), and subdivision (b), in the General Public Interest section of the California Regulatory Notice Register.